House of Representatives

General Assembly

File No. 123

February Session, 2008

House Bill No. 5758

House of Representatives, March 20, 2008

The Committee on General Law reported through REP. STONE of the 9th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING HOMEOWNER PROTECTION FROM FORECLOSURE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 49-31d of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) For the purposes of sections 49-31d to **[**49-31i**]** 49-31j, inclusive, as amended by this act:

[(1) "Unemployed person" means a person who is unemployed for purposes of chapter 567.**]**

[(2)**]** (1) "Homeowner" means a person who has **[**an**]** a legal or equitable ownership interest in residential real property secured by a mortgage, or is a mortgagor of a mortgage, which is the subject of a foreclosure action, and who has **[**owned**]** had such interest and occupied such property as his principal residence for a continuous period of not less than two years immediately preceding the commencement of such foreclosure action.

(2) "Residential real property" means property occupied as a residence by a homeowner.

(3) "Restructured mortgage debt" means the adjustment by a court of a mortgage debt to give protection from a foreclosure action.

(4) "Protection from foreclosure" means a court-ordered restructuring of a mortgage debt designed to (A) eliminate an arrearage in payments on such debt, and [to] (B) provide a period not to exceed [six] twelve months during which foreclosure is stayed.

(5) "Lender" means any person who makes or holds mortgage loans in the ordinary course of business and who is the holder of any [first] mortgage on residential real estate which is the subject of a foreclosure action.

(6) ["Underemployed] "Protected person" means a [person whose earned income during the twelve-month period immediately preceding the commencement of the foreclosure action is (A) less than fifty thousand dollars and (B) less than seventy-five per cent of his average annual earned income during the two years immediately preceding such twelve-month period] homeowner who is not current on the payments required by his or her mortgage because of a reduction in his or her income, an increase in the dollar amount of such mortgage payments, or other good cause.

(7) "Restructuring period" or "period of restructuring" means the period of time that a foreclosure action is stayed while the court restructures the mortgage.

(b) Sections 49-31d to 49-31j, inclusive, as amended by this act, are remedial in nature and shall be construed so as to implement their remedial purpose.

Sec. 2. Section 49-31e of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) In an action by a lender for the foreclosure of a mortgage of residential real property, such lender shall give notice to the homeowner of the availability of the provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act, at the time the action is commenced.

(b) A homeowner who is given notice of the availability of the provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act, must make application for protection from foreclosure within twenty-five days of the return day or of the date such homeowner files an appearance in the action, whichever is later, provided the court may extend the time for filing such application.

(c) No judgment foreclosing the title to real property by strict foreclosure or by a decree of sale shall be entered unless the court is satisfied from pleadings or affidavits on file with the court that notice has been given to the homeowner against whom the foreclosure action is commenced of the availability of the provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act.

(d) If a homeowner against whom the foreclosure action is commenced was not given notice of the availability of the provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act, at the time the action was commenced, and such homeowner was eligible to apply for protection from foreclosure at such time, the court, upon its own motion or upon the written motion of such homeowner, may issue an order staying the foreclosure action for [fifteen] twenty-five days during which period the homeowner may apply to the court for protection from foreclosure by submitting an application together with a financial affidavit as required by [subsection] subsections (a) and (b) of section 49-31f of the 2008 supplement to the general statutes, as amended by this act.

Sec. 3. Section 49-31f of the 2008 supplement to the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) Subject to the provisions of subsection (b) of this section, a homeowner [who is underemployed or unemployed] against whom a foreclosure action is brought may make application, together with a financial affidavit, to the court having jurisdiction over the foreclosure action for protection from foreclosure if: (1) The mortgage being foreclosed encumbers the residential real property, which property has served as such homeowner's principal residence, for a period of not less than two years, (2) such homeowner has not had a foreclosure [action commenced against such homeowner] judgment entered against him in regard to the residential real property owned by him in the preceding [seven-year] two-year period, and (3) such homeowner has not received an emergency mortgage assistance loan and has not applied for emergency mortgage assistance for two years before the application under the provisions of sections 8-265cc to 8-265ii, inclusive.

(b) [If the residential real property which is the subject of a foreclosure action is owned by more than one person, (1) no] (1) No homeowner shall be deemed [an unemployed] a protected person [or an underemployed person,] for the purposes of sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act, unless the aggregate [earned] income of all the homeowners of the residential real property which is the subject of such foreclosure action during the twelve-month period immediately preceding the commencement of the foreclosure action is less than [fifty thousand dollars and less than seventy-five per cent of the average aggregate annual earned income during the two years immediately preceding such twelve-month period for all such homeowners] one hundred fifty per cent of the median income for a four-person household for the area that includes the municipality in which the residential real property is located, as determined by the federal department of Housing and Urban Development, and (2) all homeowners of such property other than the homeowner making application in accordance with subsection (a) of this section shall file a financial affidavit in connection with such application.

(c) The court shall determine the eligibility of such homeowner for protection from foreclosure pursuant to the provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act.

(d) In determining the eligibility of a homeowner for protection from foreclosure under the provisions of sections 49-31d to [49-31i] 49-31j, inclusive, as amended by this act, the court may consider any relevant facts and shall consider:

(1) The likelihood that the homeowner will be able to make timely payments on the restructured mortgage commencing at the end of the restructuring period or will be able to refinance the mortgage by the end of the restructuring period; and

(2) The presence of any specific facts indicating substantial prejudice to the lender or any subordinate lienor or encumbrancer which would result from a restructuring of the mortgage debt.

(e) If the court determines the equity the homeowner has in the property and hears testimony from an appraiser produced by the lender in connection with such determination, (1) the reasonable cost of the appraisal and the appraiser's appearance as a witness shall be part of the court costs to be added to the principal balance pursuant to subdivision (4) of subsection (a) of section [49-31i] 49-31j, inclusive, as amended by this act, if a restructuring order is granted, and (2) the reasonable cost of such appraiser's appearance as a witness shall be part of the taxable costs of the action, in addition to the taxable costs for such appraisal and the appraiser's appearance as a witness at a subsequent hearing for a judgment of foreclosure if such order is not granted.

(f) If the court approves the application for protection from foreclosure and restructures the mortgage debt, the foreclosure action shall be stayed for the restructuring period. If, for a period of three months following the end of the restructuring period, there are no further proceedings to continue the foreclosure proceedings based upon a default on the mortgage as restructured, the foreclosure action shall be dismissed. The restructured mortgage debt shall have the same priority as if it had been advanced at the time the mortgage was delivered.

[(g) No homeowner who files a defense to any action for foreclosure shall be eligible to make application for protection from such foreclosure pursuant to the provisions of this section.]

Sec. 4. Section 49-31g of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

[(a) If it determines that a homeowner who is an underemployed person is eligible for protection from foreclosure pursuant to subsections (a) and (c) of section 49-31f, the court in its discretion may order the restructuring of the mortgage debt of such homeowner so as to eliminate any arrearage in payments on the mortgage debt and may allow a restructuring period not to exceed six months.]

[(b)] If it determines that a homeowner who is [an unemployed person] a protected person is eligible for protection from foreclosure pursuant to [subsection (a) of] section 49-31f of the 2008 supplement to the general statutes, as amended by this act, the court shall order the restructuring of the mortgage debt to eliminate any arrearage in payments on the mortgage debt and shall order a restructuring period not to exceed [six] twelve months.

Sec. 5. Section 49-31i of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) In determining the restructured mortgage debt, the court shall add the following to the existing principal balance of the mortgage debt: (1) All interest then due the lender and any interest that will be earned to the end of any restructuring period, including interest on any payments advanced by the lender during the restructuring period, such interest to be computed at the rate provided in the mortgage note, (2) real property taxes, (3) premiums for Federal Housing Administration, Veterans' Administration and private mortgage insurance, and (4) court costs, legal fees and any other sums the court determines to be due under the terms of the mortgage indebtedness by the court. The court shall then apply the composite interest rate as provided in subsection (c) of this section to such total restructured debt over the remaining term of the loan. In determining the restructured mortgage, the court may extend the term of the loan in order to accomplish the purposes of this act.

(b) The amount of the mortgage debt at the end of any period of restructuring shall in no event exceed either the amount of the original mortgage debt or [ninety] one hundred twenty per cent of the fair market value of the property as determined by an accredited real estate appraiser at the time of restructuring, whichever is greater. The provisions for restructuring the mortgage debt and staying the foreclosure shall apply only if the debt as restructured would not exceed such amount. Any sums added to the existing mortgage debt as a result of a restructuring order shall accrue interest at prevailing market rates after the conclusion of the restructuring period, which rate shall be either fixed or variable depending upon the underlying mortgage note.

(c) At the conclusion of the restructuring period, the new mortgage debt shall be computed based upon a composite rate of interest. The composite rate of interest shall be a weighted average of the original mortgage interest rate as to the principal balance and the prevailing interest rate as to all sums added to the principal balance to establish the total restructured mortgage debt, except that in the case of a flexible rate, variable rate or similar adjustable rate mortgage note, the [provisions of the underlying mortgage note for the redetermination of the interest rate on the mortgage shall continue to apply and remain in full force and effect during the remainder of the term of the mortgage] court may compute the rate of interest on the new mortgage debt based upon the current prevailing interest rate or at such other rate as the court deems fair and equitable.

Sec. 6. Section 49-31j of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2008*):

(a) The Banking Commissioner shall adopt such regulations, in accordance with chapter 54, as the commissioner deems necessary specifying (1) the manner in which a composite interest rate shall be computed for the new mortgage debt pursuant to subsection (c) of section [49-31i,] 49-31j, as amended by this act, and (2) the method or standard by which prevailing market rates of interest are to be determined.

(b) The Chief Court Administrator shall adopt and make available to the public (1) a form for the notice required to be given to homeowners pursuant to subsection (a) of section 49-31e, as amended by this act, which such form shall be designed so that the defendant may make application for relief under sections 49-31d to 49-31j, inclusive, as amended by this act, by returning such form to the clerk of the court, and (2) a form financial affidavit, as required by subsections (a) and (b) of section 49-31f of the 2008 supplement to the general statutes, as amended by this act. Such forms shall be in clear and simple language and format so as to be usable by litigants not represented by an attorney. [, and (3) a form a lender may use to give notice pursuant to section 49-31e to a homeowner of the availability of the provisions of sections 49-31d to 49-31i, inclusive.]

This act shall take effect as follows and shall amend the following sections:		
Section 1	*October 1, 2008*	49-31d
Sec. 2	*October 1, 2008*	49-31e
Sec. 3	*October 1, 2008*	49-31f
Sec. 4	*October 1, 2008*	49-31g
Sec. 5	*October 1, 2008*	49-31i
Sec. 6	*October 1, 2008*	49-31j

GL *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 09 $	FY 10 $
Judicial Dept.	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill makes numerous policy changes that are expected to increase the frequency of court-ordered homeowner protections from foreclosure. The bill requires the court to order restructuring of mortgage debt for any homeowner it finds to be eligible for such protection, and extends the maximum period of restructuring from six to 12 months.

These changes are not expected to alter the number of foreclosure actions brought each year. However, the per-case workload of the court would likely increase under the bill as the court considers, issues and enforces more orders of protection. It is anticipated that any such workload increase would not require additional resources (staffing or expenses).

The Out Years

The fiscal impact identified above would continue into the future.

OLR Bill Analysis
HB 5758

AN ACT CONCERNING HOMEOWNER PROTECTION FROM FORECLOSURE.

SUMMARY:

This bill makes numerous revisions in the homeowner mortgage foreclosure protection law. It:

1. expands eligibility for court-ordered homeowner protection,
2. extends the filing deadline,
3. revises the factors the court must consider when determining eligibility,
4. extends the maximum restructuring period from six to 12 months,
5. raises the cap on the amount of mortgage debt following restructuring,
6. requires the chief court administrator to issue certain disclosure forms, and
7. requires courts to construe the law in a way to implement its remedial nature.

EFFECTIVE DATE: October 1, 2008

FINANCIAL ELIGIBILITY FACTORS

Current law allows unemployed and underemployed homeowners to apply for protection. The bill eliminates the eligibility classifications and instead allows a protected homeowner to apply, which it defines as a homeowner who is not current on mortgage payments due to (1) a reduction in income, (2) an increase in the dollar amounts of the mortgage payments, or (3) other good cause.

The bill repeals the definitions of “unemployed” (unemployed for purposes of unemployment compensation) and “underemployed” (having earned income during the 12-month period immediately preceding the beginning of the foreclosures action of (1) less than $50,000 and (2) less that 75% of his average annual earned income during the two years immediately preceding the 12-month period). It redefines “homeowner” by specifying that an ownership interest means a legal and equitable ownership interest in, or is a mortgagor of, the property in foreclosure.

The bill also changes the income eligibility limit in situations in which the residence is owned by more than one person. Under current law, joint homeowners are eligible if their aggregate earned income in the 12 months immediately preceding the beginning of the foreclosure action is less than $50,000 and less than 75% of the average aggregate annual earned income during the two years immediately preceding the 12-month period. Under the bill, joint homeowners are eligible if their aggregate income is less than 150% of the median income for a four-person household for the area that includes the municipality in which the home is located, as determined by the federal Department of Housing and Urban Development.

OTHER ELIGIBILITY FACTORS

Current law makes a homeowner ineligible for foreclosure protection if he has had a foreclosure action commenced against him in the preceding seven years. The bill, instead, makes a homeowner ineligible if he or she has had a foreclosure judgment entered against him or her in the preceding two years in regard to the property occupied as a residence by the homeowner.

Current law makes a homeowner who files a defense to any foreclosure action ineligible for foreclosure protection. The bill eliminates this prohibition.

FILING FOR PROTECTION

The bill extends the time for filing for protection. The law requires a lender foreclosing on a residential mortgage to give notice to the homeowner of the availability of the protections provided by the law when it begins the foreclosure action. A homeowner who gets this notice has 25 days from the return date to apply to the court for protection. Under the bill, a homeowner has 25 days from the return date or the date the homeowner files an appearance in the foreclosure action, whichever is later. Additionally, the bill allows a court to extend the filing period.

The law prohibits the court from granting a foreclosure unless it is satisfied that the homeowner has been given the appropriate notice. If the homeowner was not given notice and was eligible to apply for the protection, the court may on its own or on the homeowner's motion, issue an order delaying the foreclosure for 15 days during which time the homeowner may apply to the court for protection. The bill extends the delay from 15 days to 25.

COURT DISCRETION TO DETERMINE ELIGIBILITY

The court has broad discretion to determine whether a homeowner is eligible. The law allows it to consider any relevant fact but requires the court to consider certain facts such as the likelihood the homeowner will be able to make timely payments when the mortgage is restructured. The bill also requires the court to consider the likelihood that a homeowner will be able to refinance the mortgage by the end of the restructuring period. The law requires the court to consider the presence of any substantial prejudice to the lender or a subsequent lienor or encumbrancer that would result from the restructuring. The bill narrows this consideration to specific facts indicating such substantial prejudice.

RESTRUCTURING THE MORTGAGE DEBT

Under current law, if the court determines that an unemployed homeowner is eligible for protection from foreclosure, it must order the restructuring of the mortgage debt to eliminate any arrearage and must order a restructuring period up to six months. If the court determines that an underemployed homeowner is eligible, it may in its discretion order the restructuring of the mortgage debt to eliminate any arrearage and may allow a restructuring period of up to six months.

The bill extends the restructuring period from six to 12 months, eliminates the distinction between under- and unemployed, and requires the court to order restructuring if it finds that a homeowner is eligible for protection from foreclosure.

RESTRUCTURED DEBT

Current law specifies that the amount of the mortgage debt following a restructuring period may not exceed the amount of the original mortgage debt or 90% of the property's fair market value, as determined by a licensed real estate appraiser at the time of restructuring, whichever is greater. The bill raises the second limit to 120% of the property's fair market value. In addition, the bill allows a court to extend the term of the loan to accomplish the bill's purposes when restructuring the debt.

After the restructuring period, the law requires the court to compute the new mortgage debt based on a composite rate of interest (original balance plus balance for restructured period at the respective rates). If the underlying mortgage has a flexible, variable, or other adjustable rate, then current law requires that its provisions continue to apply during the remainder of the mortgage term. The bill instead allows a court, when computing a new interest rate when the underlying mortgage has a flexible, variable, or other adjustable rate, to base the new rate on the current prevailing interest rate or at another rate that it determines is fair and equitable.

DISCLOSURE FORMS

The bill requires the chief court administrator to adopt and make available to the public (1) a form for lenders initiating a foreclosure action to give homeowners notifying them of the foreclosure protection law and designed to allow the defendant to apply for the protection by returning the form to the clerk of the court and (2) a form financial affidavit for homeowners required by the law's provisions relating to financial eligibility. The bill requires both forms to be in clear and simple language and format to be usable by litigants not represented by an attorney. The bill eliminates the requirement that the banking commissioner adopt regulations specifying a form that lenders notifying them of the foreclosure protection law.

LEGAL CONSTRUCTION

The bill states that the law's mortgage foreclosure protection provisions are remedial in nature and must be construed to implement their remedial purpose.

BACKGROUND

Related Bills

Several legislative committees have reported bills favorably to the floor broadly addressing residential foreclosure. They are:

Bill No.	***Committee***	***File No.***
SB 347	Housing	Not Available
HB 5552	Housing	Referred to Judiciary
HB 5553	Housing	NA
HB 5577	Banks	NA

COMMITTEE ACTION

General Law Committee

Joint Favorable
Yea 17 Nay 2 (03/06/2008)